Supreme Court, U.S.
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In the
Supreme Court of the United States

Karl T. Hoyle,
Petitioner

v.

National Credit Union Administration, Yolanda T. Wheat; Dennis Dollar and William E. Reukauf,
Respondents

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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Petition for Writ of Certiorari

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28 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether the panel opinion of the Fourth Circuit Court of Appeals improperly expands the power of an Executive Branch agency by misreading the authorizing statute and inferring powers to its Board of Directors which are not justified by the underlying legislation?

2. Whether the panel opinion of the Fourth Circuit Court of Appeals is in conflict with the holdings of other circuit courts and decisions of this Court when it permits the termination of federal employment by an authority which was not responsible for the hiring of that employee?

PARTIES INVOLVED

The following individual appeared as plaintiff in the United States District Court for the District of Columbia and the Eastern District of Virginia and as an appellant in the United States Court of Appeals for the Fourth Circuit: Karl T. Hoyle.

The following Executive Branch Agency appeared below as a defendant in the United States District Court and as an appellee in the United States Court of Appeals for the Fourth Circuit: National Credit Union Administration.

The following individuals appeared as defendants in their individual and official capacities as Members of the Board of the National Credit Union Administration in the United States District Court and as appellees in the United States Court of Appeals for the Fourth Circuit: Yolanda Townsend Wheat and Dennis Dollar.

The following individual appeared as a defendant in his individual capacity and in his official capacity as Acting Special Counsel for the National Credit Union Administration in the United States District Court and as an appellee in the United States Court of Appeals for the Fourth Circuit: William E. Reukauf.

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In the

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No. _____

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---

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered on April 25, 2001, affirming the decision of dismissal entered by the United States District Court for the Eastern District of Virginia.

Opinion Below

A panel of the United States Court of Appeals for the Fourth Circuit issued an unpublished opinion on April 25, 2001, which affirmed the dismissal decision of the United States District Court for the Eastern District of Virginia. The district court decision was announced from the bench without any written explanation. A copy of the opinion of the court of appeals is reproduced at Appendix A.

Jurisdictional Statement

The Court of Appeals for the Fourth Circuit entered its opinion on April 25, 2001. This Court has jurisdiction of this direct appeal pursuant to 28 U.S.C. 1254(1).

Constitutional Provision

Amendment V (1791) "No person shall . . . be deprived of life, liberty, or property, without due process of law. . . ."

Statutes Involved

The statutes involved are the Federal Credit Union Act, 12 U.S.C. 1751-1766. The pertinent portion of the statute is 12 U.S.C. 1766(i) and is reproduced in Appendix B.

Statement of Facts

Petitioner seeks review of the April 25, 2001, judgment of the United States Court of Appeals for the Fourth Circuit

which affirmed the decision of the district court to dismiss his complaint which alleged violations of due process in the termination of his employment at the National Credit Union Administration (NCUA). The holding of the opinion below is in conflict with decisions of this Court and other circuit courts and requires resolution by this Court.

In addition, the decision below requires review by this Court because it expands the power of an Executive Branch agency by misreading the authorizing legislation.

Petitioner, Karl T. Hoyle, brought this action against the Respondents, served in their official and individual capacities, alleging that his federal employment was terminated in violation of civil rights secured by the United States Constitution when his appointment as the Schedule C Executive Director of the NCUA was involuntarily terminated by persons other than those who appointed him to that position. Petitioner contends that he was appointed to that position by the Chairman of the NCUA Board and that he can be terminated only by that appointing authority. The Chairman voted against the decision to terminate him. The Respondents' motion to dismiss (which the Court of Appeals treated as a motion for Summary Judgment) was granted by United States District Judge Leonie M. Brinkema, which the Petitioner appealed.

The position of Executive Director of the NCUA to which Petitioner was appointed in December 1993, is a Schedule C Position within the United States Government, requiring the approval of the White House through the Office of Personnel Management (OPM). On May 12, 1994, Petitioner's appointment to the Executive Directorship of the NCUA was approved by the White House and OPM, resulting in his temporary Schedule C appointment being converted to a permanent Schedule C position.

Petitioner was selected for both the temporary and permanent Schedule C appointments as NCUA Executive Director by the Chairman of the NCUA, Mr. Norman E. D'Amours. As the Executive Director of the NCUA, Petitioner Hoyle reported to the Chairman of the Agency, Norman E. D'Amours. Petitioner's OPM Forms 1019 (Information on Schedule C Position and Incumbent), dated December 10, 1993 and April 12, 1994, are signed by Norman E. D'Amours, as the Agency "Head." These Forms also list the "Title of Incumbent's Supervisor" as "Chairman, NCUA. " The Position Description (SS-301-00) accompanying Petitioner's OPM Forms 1019 denotes the position as "the Executive Director to the Chairman of the Board, Norman E. D'Amours," and the Petitioner's official NCUA biography states that he was appointed by NCUA Chairman D'Amours.

At no time did the appointment of the Petitioner to the position of NCUA Executive Director require the approval of the other NCUA Board Members and no such action was ever taken. At no time did the President of the United States or the OPM direct that Petitioner be terminated. On January 21, 1998, the NCUA Board of Directors adopted a motion to terminate Petitioner by a 2-1 vote of its three members. The Chairman of the Board, who was the Petitioner's appointing authority, voted against this motion. Petitioner's employment as NCUA Executive Director terminated on February 23, 1998.

On January 19, 1999, Petitioner filed an action in the United States District Court for the District of Columbia seeking reinstatatement. Pursuant to a venue objection, the matter was transferred to the Eastern District of Virginia, which granted a Rule 12(b) motion by the Respondents/defendants on July 28, 2000. On April, 25, 2001, that decision was affirmed by a panel of the Fourth Circuit in an unpublished opinion.

(Appendix A). There was no petition for re-hearing or re-hearing en banc.

REASONS FOR GRANTING THE WRIT

I

THE PANEL DECISION INCORRECTLY EXPANDS BY JUDICIAL FIAT THE POWER OF THE BOARD OF DIRECTORS OF THE NATIONAL CREDIT UNION ASSOCIATION

Petitioner submits that the Fourth Circuit decision below improperly expands the power of the Board of Directors of the NCUA. This expansion of power is not justified by the statutory references relied upon by the Circuit decision and is an unwarranted expansion of administrative control and serves as authority for future conflict and confusion in the administration of executive agencies.

1. History of the NCUA

In 1934 the original Federal Credit Union Act was signed into law and authorized the establishment of federally chartered credit unions in all states. Supervision was initially the responsibility of the Farm Credit Administration and through the years was transferred to various federal agencies, including the Federal Deposit Insurance Corporation and the Department of Health, Education and Welfare. As credit unions grew, the need for more formal supervision became apparent and in 1970 the National Credit Union Administration was

created to charter and supervise federal credit unions and the National Credit Union Share Insurance Fund. Prior to 1978, the agency was headed by a single Administrator who was assisted by an advisory board. As part of the Financial Institutions Regulatory and Interest Rate Control Act, a Board of Directors was created and the post of Administrator became the Chairman of the Board. The legislative history indicates that a Board was created to conform to the typical operation of other financial institutions. House Report No. 95-1383, 1978 U.S.C.C.A.N. 9273, 9298.

2. The Fourth Circuit Decision Incorrectly Interprets the Federal Credit Union Act.

Contrary to the conclusion of the Fourth Circuit, the Board of Directors is not "head of the NCUA". Nowhere in the statutory language is such a designation made. As Petitioner demonstrated below, the personnel documents of Petitioner list the Chairman of the Board as the head of the agency and his appointing authority. Although the statutory language which created the Board did give it executive powers, these powers were not made exclusive to the Board. See 12 U.S.C. 1766. Moreover, this delegation of power must be viewed in the context of an agency which traditionally had been directed by a single Administrator who was renamed as Board Chairman in the1978 legislation.

While Petitioner agrees with the principle relied upon by the Fourth Circuit that the body who has authority to hire also has the authority to fire, he reaches a far different conclusion than the court did below. Contrary to the Fourth Circuit's decision, the Board does not have the "clear authority" to hire an Executive Director for the NCUA. (Slip Opinion p. 3) Despite the Fourth Circuit's inference, nowhere in the statute is

this authority mentioned and by no legitimate stretch of the imagination can it be claimed that the appointment of Executive Director is the sole responsibility–or even co-responsibility--of the Board of Directors.

It is undisputed that the Petitioner was appointed Executive Director by the Chairman of the NCUA. It is also agreed by all parties below that this appointment did not require the approval of the Board to become effective. Significantly, there has never been an argument raised that the Chairman himself did not have the authority to select and appoint the Petitioner to his position. By the Fourth Circuit's own logic, if the Board did not hire the Petitioner, it could not fire him. The stretch by the Fourth Circuit to justify this usurpation of authority cannot be justified by the Federal Credit Union Act.

Finally, Petitioner would note that although statutory language on this matter is silent on the exact language of personnel control, the internal rules of the NCUA are not. These internal procedures, found in the Personnel Management Delegation of November 27, 1995, contradict the Fourth Circuit premise and restricts the NCUA Board from any authority to control the personal staff of other Board Members. (NCUA HR 1) The Fourth Circuit refused to address this question.

The Petitioner's complaint in the District Court was dismissed because the Fourth Circuit agreed that there was "clear authority" to terminate his employment by the Board of Directors when the appointing authority wished to retain him in that position. Once this "clear authority" evaporates, the claim of wrongful termination becomes a viable trial issue which should have been permitted to be litigated.

II

THE PANEL DECISION IS IN CONFLICT WITH THE D.C. CIRCUIT'S DECISION IN *NATIONAL TREASURY EMPLOYEES UNION*

Petitioner relied in his argument to the Fourth Circuit upon the decision by the District of Columbia Circuit in *National Treasury Employees Union v. Reagan*, 663 F.2d 239 (D.C. 1981) It is significant to note that the Fourth Circuit declined to address this issue in its opinion. Petitioner submits that despite the silence of the court below, the conflict between *National Treasury* and the decision in this case remains.

In *National Treasury Union*, the D.C. Circuit addressed the problem of what rights individuals had who had been formally notified that they had been selected for Federal employment but were subsequently caught in a Federal hiring freeze under which the President revoked their appointment. In reaching the conclusion that these employees had no rights, the Circuit Court found that the revocation of appointment was properly executed. In order to do this, the court examined the nature of federal hiring and termination authority.

In doing so, *National Treasury Union* relied upon this Court's decision *In the Matter of Hennen*, 38 U.S. 230, 13 Pet. 230 (1839), in which the power to remove a clerk of a court was considered. In that case, this Court concluded that "[I]t would seem to be a sound and necessary rule, to consider the power or removal as incident to the power of appointment." *Id.* at 259.

Hennen, in turn was based on the seminal decision of this Court in *Marbury v. Madison*, 5 U.S. 137 (1803) in which

Chief Justice Marshal examined the federal appointment process in some detail and wrote that a revocable commission of federal employment allowed the executive who appointed the employee to terminate the employment at any time. 5 U.S. at 45-46. The reference in *Marbury* that only the appointing executive could terminate the appointment of employment was explicitly recognized in *Hennen* and has served as the basis for the repeated acceptance of that principle by all courts. *Cafeteria and Restaurant Workers Union v. McElroy*, 367 U.S. 886, 896 (1961)("It has become a settled principle that government employment, in the absence of legislation, can be revoked at the will of the appointing officer.") *reh'g denied*, 368 U.S. 869 (1961)

Numerous early decisions by this Court established the now unquestioned principle that the right to remove from office is incident to the power to appoint. *Reagan v. United States*, 182 U.S. 419 (1901); *United States v. Allard*, 155 U.S. 591 (1895); *Blake v. United States*, 103 U.S. 227 (1881).

National Treasury Union went on to summarize the ruling in *Hennen* with the principle that "The only one authorized to revoke an appointment is the one authorized to make it. . . ." 663 F.2d at 247. The *National Treasury Union* opinion then considered a situation analogous to the present case and wrote that, "Thus, for example, an appointment authorized to be made by the Secretary of Defense, and in fact, made by the Secretary of Defense, cannot be revoked by the President" *Id.* at 247. The ultimate conclusion of *National Treasury Union* that, "[T]he power to remove is held by the appointing authority, and only by the appointing authority." *Id.* at 247, remains the current state of the law.

The Fourth Circuit opinion in this case attempts to detour around this principle by claiming that if the Board could have appointed an executive director, then it had the power to terminate him even if it did not actually do the appointing. Because of the historically strong link between appointment and termination, this fuzzy reasoning of the court below places its conclusion in conflict with the circuit decision in *National Treasury Union* as well as the decisions of this Court upon which *National Treasury Union* relies.

Petitioner submits that the prospect of enlarging the power to dismiss federal employees is a dangerous one in that it places the ultimate control of an employees fate--and thus control over their decision making–into the hands of those whom the legislature did not authorize. This Court has recognized that the power of removal is a potentially "coercive influence" which "threatens the independence of a commission. . . ." *Humphrey's Executor v. United States*, 295 U.S. 602, 630 (1935). Nor is this matter an isolated example. It occurs on a recurring basis in administrative agencies.[1]

This Court has long concluded that Due Process is a flexible concept that calls for procedural protections as the particular situation demands. *Morrisey v. Brewer*, 408 U.S. 471, 481 (1972). It is meant to insure basic fairness and applies to the government in its relationship to its employees. *See, e.g. Greene v. McElroy*, 360 U.S. 474 (1959). Petitioner submits that fundamentals of basic fairness require that he be able to challenge an action for employment termination when that termination is performed by someone other than that who hired

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1 See resignation letter of Ellen Seidman, Director of Office of Thrift Supervision, Department of Treasury, July 3, 2001. Correspondence may be found at www.ots.treas.gov/docs/48859.pdf.

him and is contrary to the rules of the agency. A ruling which insulates that type of behavior is contrary to the settled decisions of this Court and circuit opinions and interjects the potential for disruption of the orderly administration of executive agencies.

CONCLUSION

Petitioner submits that the decision of the Fourth Circuit must be reviewed because it improperly expands the power of an Executive Branch agency without legislative support. In addition, the decision is in conflict with long standing principles of this Court on federal employment and conflicts with other circuit court decisions.

Respectfully submitted,

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Appendix A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

KARL T. HOYLE,

Plaintiff-Appellant,

V. No. 00-2085

NATIONAL CREDIT UNION ADMINISTRATION; YOLANDA TOWNSEND WHEAT; DENNIS DOLLAR,
Individually and in their official capacities as Members of the Board; WILLIAM E. REUKAUF, Individually and in his official capacity as Acting Special Counsel,
Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Leonie M. Brinkema, District Judge. (CA-00-865)

Submitted: March 13, 2001

Decided: April 25, 2001

Before WILKINS, MICHAEL, and KING, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

James J. Butera, Dennis M. Hart, BUTERA & ANDREWS, Washington, D.C., for Appellant. Helen F. Fahey, United States Attorney, Rachel C. Ballow, Assistant United States Attorney, Alexandria, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Karl T. Hoyle appeals the district court's order granting the Appellees' motion to dismiss under Fed. R. Civ. P. 12(b)(6). Hoyle was a schedule C federal employee who served as Executive Director at the National Credit Union Administration ("NCUA"). Hoyle was terminated by the NCUA Board of Directors ("the Board"), which voted two to one to terminate Hoyle's employment based on his responsibility for illegal employment practices. The dissenting vote was offered by Board Chairman Norman E. D'Amours. Hoyle asserts only D'Amours held the power to terminate his employment.

Because the district court considered materials outside the parties' pleadings, we construe its action in granting Appellees' motion as granting summary judgment. *See* Fed. R. App. P. 12(b). In reviewing an appeal from a district court's grant of summary judgment, this court conducts a review de novo,

assessing whether there is a genuine question of material fact, drawing all factual contentions and justifiable inferences to favor the nonmovant. *See, e.g., Brinkley v. Harbour Recreation Club, 180* F.3d *598,* 606 (4th Cir. *1999).* A district court's dismissal of a plaintiffs action for failure to state a claim is also reviewed de novo, construing factual allegations in the light most favorable to the plaintiff, and is appropriate where "no relief could be granted under any set of facts that could be proved consistent with the allegations." *Randall v. United States, 95* F.3d 339, 343 (4th Cir. 1996)(quoting *Hishon v. King & Spalding,* 467 U.S. 69, 73 (1984)).

We conclude the district court correctly determined that Hoyle failed to state a wrongful termination claim. The Board's powers are established by the Federal Credit Union Act, 12 U.S.C. §§ 1751-1766 (1994) ("the Act"). Under the Act, the Board, not the Chairman, is the head of the NCUA. The Board has power over all executive functions. 12 U.S.C. § 1766(d). The NCUA Chairman acts as the Board's spokesperson and representative. 12 U.S.C. § 1752(e). The Board, as head of the NCUA, has authority to appoint and terminate employees. 12 U.S.C. § 1766(i); *In re Hennen,* 38 U.S. (13 Pet.) 230, 259 (1839).

Since the Act provided clear authority for the Board to terminate Hoyle's employment, Hoyle's claim of wrongful termination fails even when the factual allegations are construed in the light most favorable to him. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

Appendix B

12 USCS § 1766
UNITED STATES CODE

§ 1766. Certain powers of Board

(a) The Board may prescribe rules and regulations for the administration of this Act (including, but not by way of limitation, the merger, consolidation, and dissolution of corporations organized under this Act). Any central credit union chartered by the Board shall be subject to such rules, regulations, and orders as the Board deems appropriate and, except as otherwise specifically provided in such rules, regulations, or orders, shall be vested with or subject to the same rights, privileges, duties, restrictions, penalties, liabilities, conditions, and limitations that would apply to all Federal credit unions under this Act.

(b) (1) The Board may suspend or revoke the charter of any Federal credit union, or place the same in involuntary liquidation and appoint a liquidating agent therefor, upon its finding that the organization is bankrupt or insolvent, or has violated any of the provisions of its charter, its bylaws, this Act, or any regulations issued thereunder.

(2) The Board, through such persons as it shall designate, may examine any Federal credit union in voluntary liquidation and, upon its finding that such voluntary liquidation is not being conducted in an orderly or efficient manner or in the best interests of its members, may terminate

such voluntary liquidation and place such organization in involuntary liquidation and appoint a liquidating agent therefor.

(3) Such liquidating agent shall have power and authority, subject to the control and supervision of the Board and under such rules and regulations as the Board may prescribe, (A) to receive and take possession of the books, records, assets, and property of every description of the Federal credit union in liquidation, to sell, enforce collection of, and liquidate all such assets and property, to compound all bad or doubtful debts, and to sue in his own name or in the name of the Federal credit union in liquidation, and defend such actions as may be brought against him as liquidating agent or against the Federal credit union; (B) to receive, examine, and pass upon all claims against the Federal credit union in liquidation, including claims of members on member accounts; (C) to make distribution and payment to creditors and members as their interests may appear; and (D) to execute such documents and papers and to do such other acts and things which he may deem necessary or desirable to discharge his duties hereunder.

(4) Subject to the control and supervision of the Board and under such rules and regulations as the Board may prescribe, the liquidating agent of a Federal credit union in involuntary liquidation shall (A) cause notice to be given to creditors and members to present their claims and make legal proof thereof, which notice shall be published once a week in each of three successive weeks in a newspaper of general circulation in each county in which the Federal credit union in liquidation maintained an office or branch for the transaction of business on the date it ceased unrestricted operations; except that whenever the aggregate book value of the assets and property of a Federal credit union in involuntary liquidation is less than $ 1,000, unless the Board shall find that its books and records do not contain a true and

accurate record of its liabilities, he shall declare such Federal credit union in liquidation to be a "no publication" liquidation, and publication of notice to creditors and members shall not be required in such case; (B) from time to time make a ratable dividend on all such claims as may have been proved to his satisfaction or adjudicated in a court of competent jurisdiction and, after the assets of such organization have been liquidated, make further dividends on all claims previously proved or adjudicated, and he may accept in lieu of a formal proof of claim on behalf of any creditor or member the statement of any amount due to such creditor or member as shown on the books and records of the credit union; but all claims not filed before payment of the final dividend shall be barred and claims rejected or disallowed by the liquidating agent shall be likewise barred unless suit be instituted thereon within three months after notice of rejection or disallowance; and (C) in a "no publication" liquidation, determine from all sources available to him, and within the limits of available funds of the Federal credit union, the amounts due to creditors and members, and after sixty days shall have elapsed from the date of his appointment distribute the funds of the Federal credit union to creditors and members ratably and as their interests may appear.

(5) Upon certification by the liquidating agent in the case of an involuntary liquidation, and upon such proof as shall be satisfactory to the Board in the case of a voluntary liquidation, that distribution has been made and that liquidation has been completed, as provided herein, the Board shall cancel the charter of such Federal credit union; but the corporate existence of the Federal credit union shall continue for a period of three years from the date of such cancellation of its charter, during which period the liquidating agent, or his duly appointed successor, or such persons as the Board shall designate, may act on behalf of the Federal credit union

for the purpose of paying, satisfying, and discharging any existing liabilities or obligations, collecting and distributing its assets, and doing all other acts required to adjust and wind up its business and affairs, and it may sue and be sued in its corporate name.

(c) After the expiration of five years from the date of cancellation of the charter of a Federal credit union the Board may, in its discretion, destroy any or all books and records of such Federal credit union in its possession or under its control.

(d) The Board is authorized and empowered to execute any and all functions and perform any and all duties vested in them hereby, through such persons as it shall designate or employ; and it may delegate to any person or persons, including any institution operating under the general supervision of the Administration, the performance and discharge of any authority, power, or function vested in them by this Act.

(e) All books and records of Federal credit unions shall be kept and reports shall be made in accordance with forms approved by the Board.

(f) (1) The Board is authorized to make investigations and to conduct researches and studies of the problems of persons of small means in obtaining credit at reasonable rates of interest, and of the methods and benefits of cooperative saving and lending among such persons. It is further authorized to make reports of such investigations and to publish and disseminate the same.

(2) (A) The Board is authorized to conduct directly, or to make grants to or contracts with colleges or universities, State or local educational agencies, or other appropriate

public or private nonprofit organizations to conduct, programs for the training of persons engaged, or preparing to engage, in the operation of credit unions, and in related consumer counseling programs, serving the poor. It is authorized to establish a program of experimental, developmental, demonstration, and pilot projects, either directly or by grants to public or private nonprofit organizations, including credit unions, or by contracts with such organizations or other private organizations, designed to promote more effective operation of credit unions, and related consumer counseling programs, serving the poor.

(B) In carrying out its authority under this paragraph, the Board shall consult with officials of the Office of Economic Opportunity and other appropriate Federal agencies responsible for the administration of projects or programs concerned with problems of the poor. The development and operation of programs and projects under this paragraph shall involve maximum feasible participation of residents of the areas and members of the groups served by such programs and projects, with community action agencies established under the provisions of the Economic Opportunity Act of 1964 serving, to the extent feasible, as the means through which such participation is achieved.

(C) In order to carry out the purposes of this paragraph, there is authorized to be appropriated, as a supplement to any funds that may be expended by the Board pursuant to sections 6 and 7 for such purposes, not to exceed $ 300,000 for the fiscal year ending June 30, 1970, and not to exceed $ 1,000,000 for the fiscal year ending June 30, 1971.

(g) Any officer or employee of the Administration is authorized, when designated for the purpose by the Board, to administer oaths and affirmations and to take affidavits and depositions touching upon any matter within the jurisdiction

of the Administration.

(h) The Board is authorized, empowered, and directed to require that every person appointed or elected by any Federal credit union to any position requiring the receipt, payment, or custody of money or other personal property owned by a Federal credit union, or in its custody or control as collateral or otherwise, give bond in a corporate surety company holding a certificate of authority from the Secretary of the Treasury under the Act approved July 30, 1947, as an acceptable surety on Federal bonds. Any such bond or bonds shall be in a form approved by the Board with a view to providing surety coverage to the Federal credit union with reference to loss by reason of acts of fraud or dishonesty including forgery, theft, embezzlement, wrongful abstraction, or misapplication on the part of the person, directly or through connivance with others, and such other surety coverages as the Board may determine to be reasonably appropriate or as elsewhere required by this Act. Any such bond or bonds shall be in such an amount in relation to the money or other personal property involved or in relation to the assets of the Federal credit union as the Board may from time to time prescribe by regulation for the purpose of requiring reasonable coverage. In lieu of individual bonds the Board may approve the use of a form of schedule or blanket bond which covers all of the officers and employees of a Federal credit union whose duties include the receipt, payment, or custody of money or other personal property for or on behalf of the Federal credit union. The Board may also approve the use of a form of excess coverage bond whereby a Federal credit union may obtain an amount of coverage in excess of the basic surety coverage.

(i) In addition to the authority conferred upon them by other

sections of this Act, the Board is authorized in carrying out its functions under this Act--

(1) to appoint such personnel as may be necessary to enable the Administration to carry out its functions;

(2) to expend such funds, enter into such contracts with public and private organizations and persons, make such payments in advance or by way of reimbursement, acquire and dispose of, by lease or purchase, real or personal property, without regard to the provisions of any other law applicable to executive or independent agencies of the United States, and perform such other functions or acts as it may deem necessary or appropriate to carry out the provisions of this Act in accordance with the rules and regulations or policies established by the Board not inconsistent with this Act; and

(3) to pay stipends, including allowances for travel to and from the place of residence, to any individual to study in a program assisted under this Act upon a determination by the Board that assistance to such individual in such studies will be in furtherance of the purposes of this Act

(j) Staff.

(1) Appointment and compensation. The Board shall fix the compensation and number of, and appoint and direct, employees of the Board. Rates of basic pay for employees of the Board may be set and adjusted by the Board without regard to the provisions of chapter 51 or subchapter III of chapter 53 of title 5, United States Code.

(2) Additional compensation and benefits. The Board may provide additional compensation and benefits to employees of the Board if the same type of compensation or benefits are then being provided by any other Federal bank regulatory agency or, if not then being provided, could be provided by

such an agency under applicable provisions of law, rule, or regulation. In setting and adjusting the total amount of compensation and benefits for employees of the Board, the Board shall seek to maintain comparability with other Federal bank regulatory agencies.

(3) Funding. The salaries and expenses of the Board and employees of the Board shall be paid from fees and assessments (including income earned on insurance deposits) levied on insured credit unions under this Act.

Supreme Court, U.S.
FILED

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Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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Supplemental Appendix

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Order (July 28, 2000) 1

Judgment (July 28, 2000) 2

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

KARL T. HOYLE,
Plaintiff,

v.

NATIONAL CREDIT UNION ADMINISTRATION, et al.,
Defendants.

Civil Action No. 00-865-A

ORDER

For the reasons stated in open court, defendants' Motion to Dismiss is GRANTED. Accordingly, it is hereby

ORDERED that this civil action be and is DISMISSED WITH PREJUDICE.

The Clerk is directed to enter judgment pursuant to Fed. R. Civ. P. 58 in defendants' favor and to forward copies of this Order to counsel of record.

Entered this 28th day of July 2000.

Leonie M. Brinkema
United States District Judge

Alexandria, Virginia

UNITED STATES DISTRICT COURT

Eastern District of Virginia
Alexandria Division

KARL T. HOYLE,
Plaintiff

v. C.A. No. 00-865-A

NATIONAL CREDIT UNION,
ADMINISTRATION, et al.,

Defendants.

JUDGMENT

Pursuant to the order of this Court entered on July 28, 2000,and in accordance with Federal Rule of Civil Procedure 58, JUDGMENT is hereby entered in favor of *National Credit Union Administration, et al.,* the defendants, against Karl T. Hoyle, the, the plaintiff.

Entered this 28th day of July, 2000.

NORMAN H. MEYER, JR, CLERK

By:_____
Robin E. Tavers,
Deputy Clerk